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Case No.

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

OCTOBER TERM, 1995

MADISON ANDERSON

Petitioner

v

MERLL JOHNSON,
aka Merle Dortch

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

MADISON ANDERSON
In Pro Per
3831 Kendal
Detroit, Michigan

6 pp

QUESTIONS PRESENTED FOR REVIEW

I. SHOULD THE PROVISION OF MCR 2.612 (2) REMAIN SO INFLEXIBLE IN ITS APPLICATION THAT SUCH APPLICATION DENIES THE PETITIONER A FUNDAMENTAL RIGHT TO BE HEARD ON THE ISSUE OF PATERNITY UNDER THE DUE PROCESS CLAUSE OF THE UNITED STATES?

II. SHOULD THE FRIEND OF THE COURT BE PERMITTED TO REMAIN AS AGENT TO A FRAUD BY COURT ORDER OF FILIATION AND SUPPORT THAT RESULTS IN THE DEPRIVATION OF PETITIONERS SUBSTANTIVE DUE PROCESS RIGHT TO HIS PROPERTY?

III. SHOULD AN IMPROPER DEFAULT JUDGMENT AND NONCONCLUSIVE BLOOD TEST ON THE ISSUE OF PATERNITY REMAIN INTACT WITHOUT BENEFIT OF TRIAL WHERE SUCH INVASION OF PETITIONER'S PRIVATE INTEREST EFFECTING BOTH HIS PRESENT AND FUTURE PROPERTY RIGHTS WAS OBTAINED IN VIOLATION OF PETITIONER'S PROCEDURAL AND SUBSTANTIVE DUE PROCESS RIGHT?

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IN THE SUPREME COURT
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OCTOBER TERM, 1995

MADISON ANDERSON,

Petitioner,

v
MERLL JOHNSON,
aka Merll Dortch,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

The Petitioner, Madison Anderson, respectfully prays that a Writ of Certiorari issue to review the denial of Petitioner's delayed application for leave to appeal by the Michigan Supreme Court entered in the above entitled proceeding on 12-27-95, and the subsequent denial of petitioner's motion for reconsideration of his aforementioned delayed application of February 23, 1996.

OPINIONS/ORDERS BELOW

Michigan Supreme Court Order dated 12/27/95 denying Defendant-Appellant, Madison Anderson's de-

layed application for leave to appeal. Michigan Supreme Court Order dated 2/23/96 denying Defendant-Appellant Madison Anderson's motion for reconsideration, and are reprinted in Appendix A, P. Default Order of Filiation and Order For Support, 9/19/88; Order Denying Defendant's Motion to Quash Service of Process and to Set Aside Default, Default Judgement and Order of filiation, 2/16/90, Judge Richard Kaufman, Circuit Court Judge for the County of Wayne; Court of Appeals Decision of 5/6/91, No. 126720, reprinted in Appendix A, p. 1 -.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 USC Sections 1257, 1331.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

The case involves the Fourteenth Amendment of the United States Constitution. Said amendment is set out verbatim in the Appendix. Further, it involves MCLA 722.716, MSA 25.496, MCLA 722.717; MSA 25.497; MCR 2.105, MCR 2.603, MCR 2.612.

The aforementioned statuetes and Court Rules are set forth in pertinent part, Appendix B hereto, p. B-1 to B-

STATEMENT OF CASE

Defendant-Appellant, Madison Anderson, first became acquainted with Merll Johnson, Plaintiff-Appellee, on or about June 15, 1970. They entered into an intimate relationship in 1971. This rela-

tionship continued until about August or September, 1972, at which time Plaintiff-Appellee left the City of Detroit in the company of a Mr. "X". Mr. Anderson did not see her again until on or about January 10, 1989. On this date, January 10, 1989, Ms. Johnson was the mother of a minor child, Matthew Johnson, born on July 16, 1984, some 12 years subsequent to her having left the State of Michigan in the company of another man, and taking up residence in California.

The date on which Defendant-Appellant became aware of the existence of the minor child coincided with the first contact had between Defendant-Appellant and Ms. Johnson since her leaving the State of Michigan in the company of another man; and after she had filed an assault charge against Defendant-Appellant.

The place and time of Defendant-Appellant seeing Ms. Johnson on January 10, 1989 was during the course of a Show Cause hearing held before the Honorable Michael J. Connor, Wayne County Circuit Court Judge. Ostensibly, Defendant-Appellant had reason to believe that he was before the Court for the purpose of clarifying the identity of the parties. Plaintiff-Appellee was known to him as Ms. Dortch. The fact that Ms. Johnson had left the State of Michigan some 16 years prior to the hearing did not support her claim that Defendant-Appel-

lant was the father of her child, who was four years old in 1989.

On or about October 28, 1988, Defendant-Appellant was informed by the Office of the Friend of the Court, when he responded to receipt of a payment coupon book received in the mail from the Office of the Friend of the Court, at 3831 Kendall, Detroit, Michigan 48238, that Ms. Johnson, a/k/a Ms. Dortch, had filed a paternity action against him, and had been awarded a default judgment of filiation and support.

Inclusive of all hearings afforded Defendant, beginning with the statutory hearing before the Honorable Michael J. Connor, Wayne County Circuit Court Judge, on January 10, 1989, continuing with hearings before the Honorable Richard C. Kaufman, Judge of the Circuit Court for the County of Wayne; and culminating with the hearing before the Honorable James J. Rashid, Judge of the Wayne County Circuit Court on Friday, January 21, 1994; at no time was he granted trial on the merits.

At the hearing before the Honorable Richard C. Kaufman on January 19, 1990, an evidentiary hearing was held based on petitioner's motion challenging jurisdiction due to a failure to gain personal jurisdiction over him because of improper service. Petitioner's motion was denied. This issue was appealed to the Michigan Supreme Court on June 6,

1991, but was never resolved.

This case from the beginning has invoked the Friend of the Court, a governmental entity, acting in behalf of Ms. Johnson and DSS.

The significance of the principles involved, to the State of Michigan's jurisprudence is exemplified by and in conflict with Kaleal v Kaleal, 73 Mich App 181; Patapoff v Vollsteadt's, Inc., CA or 1959, 267 F2d 863; and L.M. Leather's sons v Goldman, CA MI 1958, 252 F2d 188, wherein the Courts held that relief from judgment is appropriate and vests a court with the power to vacate judgement. See, also Michigan Court of Appeals case: Department of Social Services on behalf of Victoria L. Lancaster (Plaintiff-Appellee) v Roger Joseph Franzel (Defendant-Appellant), No. 138551, LC 85-14270-DS (1994).

In the later case, Defendant-Appellant acknowledged paternity on April 21, 1988:

> On January 16, 1988, Victoria Lancaster gave birth to another son, Christopher William Lancaster. On April 21, 1988, at the instigation of DSS, acting again on the behalf of Victoria Lancaster, defendant executed an acknowledgment of paternity to Christopher. On the same date, defendant also signed a stipulation to amend the order of filiation and support entered in 1985, obligating defendant to provide support for both Martin and Christopher. An order was entered on April 29, 1988, reflecting the terms of the stipulation. During

1989 and 1990, defendant was the subject of four petitions and orders to show cause for contempt due to his failure to meet his support obligations.

On April 9, 1990 – two years after signing the acknowledgement of paternity – defendant filed a motion to set aside the amended order of filiation and support alleging that he "did not understand the nature and consequence of his execution of the Affidavit of Parentage" and that he had felt "compelled to sign" the affidavit or go to jail. Defendant further alleged that he did not believe he was the biological father of Christopher and requested that the court order blood tests.

At a hearing on the motion held May 14, 1990, defendant testified that although he did sign the affidavit of parentage of Christopher, he did not understand the nature of consequences of the document. He stated, however, that he was not threatened or coerced into signing the affidavit. During the two years since signing the affidavit, defendant testified that he began to feel that Christopher was not his biological son, that Christopher did not look like Martin and that he has since learned that Victoria was "seeing other men" at the time of conception. The trial court reluctantly ordered blood tests to be performed, stating "I'm cognizant of the fact that the Friend of the Court's office shows a $5,525.37 delinquency for this child and I think I know the motivation for the filing of the petition." The HLA tests were done and excluded defendant.

On September 11, 1990, defendant filed a second motion to set aside the amended order of filia-

tion and support citing the results of the blood tests which indicated that defendant was not the biological father of Christopher. Following a hearing on the motion held on September 24, 1990, the trial court entered an option on December 27, 1990, denying defendant's motion on the basis of res judicata. An order reflecting the court's decision was entered on February 21, 1991. Defendant appeals by right.

Defendant raises three issues, the first two attacking jurisdication, and the third attacking the merits of the trial court's order denying defendant relief. We find that the Circuit Court had both personal and subject matter jurisdiction, but reverse the trial court on the merits and grant the relief requested.

Defendant urges error in the trial court's decision on the basis of MCR 2.612(C) and the specific subrules set forth below:

> (C) Grounds for Relief From Judgement
>
> (1) On motion and on just terms, the court may relieve a party of the legal representative of a party from a final judgement, order, or proceeding on the following grounds.
>
> * * *
>
> (e) [I]t is no longer equitable that the judgement should have prospective application.
>
> (f) Any other reason justifying relief from the operation of the judgement.

We find error on the basis of subparagraph (e). We believe that the defendant is entitled to equitable relief.

On January 10, 1989, Charlie Fonville, Esq., appeared before Honorable Michael J. Connor in behalf of Defendant-Appellant and represented that he was appearing because: "I think he (Mr. Anderson) has some grounds to file a Motion to Quash." (P 20 of T, LL 5-7.)

The following conversation indicates the presence of substantial grounds for questioning jurisdication at this stage of the proceedings:

> THE COURT: But your position is you haven't filed those motions.
>
> MR. FONVILLE: Because I was told to come here this morning at 9 o'clock.
>
> THE COURT: You don't come here unless you're appealing the order. As near as I can see, you're not appealing the order.
>
> MR. FONVILLE: Well, I disagree with the referee because I think if we are going to have a question with regard to jurisdiction, we should file a motion.
>
> THE COURT: At some point maybe you will file a motion in that regard.
>
> (P 20 of T, LL 8-20.)

Although the Michigan Court of Appeals has held

that "the burden of proof to show non-service [and therefore lack of jurisdiction] is upon the party attacking the jurisdiction of the Court, mere denial of such service by that party attacking the jurisdiction of the Court, mere denial of such service by that party is insufficient." Delph v Smith, 354 Mich 12; 91 NW2d 854 (1958); Petitioner-Appellant was not in this position.

Mr. Adolphus Thornton, who shared the same address as Mr. Anderson but not the same apartment in a four-unit multiple dwelling, executed an Affidavit on June 4, 1991, three days after the court of Appeals' ruling which supported Mr. Anderson's claim that he had not been served. (A copy of the same is attached hereto and made a part hereof.)

From the contents of the Affidavit, it appears that the process server mistakenly assumed that the person he attempted to serve was Mr. Anderson; an assumption relative to mistaken identity is also supported by a letter from Mr. Anderson's place of employment, Ford Motor Company, Wixom Assembly Plant, Wixom, Michigan, verifying Mr. Anderson's Affidavit which was executed on May 18, 1993 and bearing the signatures of Richard Moenart, supervisor and James T. Foss, head of hourly personnel (a copy of said letter is attached hereto and made a part hereof).

At one point during discussions of a Motion to

Quash to be filed by Mr. Charlie Fonville, Esq., in Defendant-Appellant's behalf, the Honorable Michael J. Connor threatened him with arrest in lieu of conducting a hearing designed to protect and extend the benefits of due process to Mr. Anderson.

> THE COURT: At some point, maybe you will fill a motion in that regard.
>
> In the meantime I guess we will just comply with the order.
>
> MR. FONVILLE: If he doesn't there was a petition for an order to show cause. There is a show cause. He was directed to pay $350.00 immediately and execute a $100 wage assignment. If he doesn't do that today, then I hope he has brought his toothbrush.
>
> THE COURT: And if you want to file some motion, I mean, you don't want to be heard on it today.
>
> MR. FONVILLE: No, I am not prepared.
>
> THE COURT: You can have the motion heard anytime you want, I guess, but in the meantime, he better comply with that order or we have got a place for him."

(P 20 and 21 of T, LL 19-25 and 1-12, respectively.)

Under the threat of being incarcerated, Mr. Anderson unwillingly paid $350.00 to the Friend of the court, to be surrendered to Ms. Dortch, a/k/a

Merll Johnson.

Approximately six months after the compelled payment of $350.00, based on the default judgment and Order of Filiation, the defendant submitted to a blood test that did not exclude him but he was precluded from challenging blood test at trial due to the default judgement.

In respect to the above, the Petitioner would stress that the Petition raises significant due process issues surrounding the questions of notice, default judgment and consequent absence of trial on the issue of paternity relative to petitioner's absence of parental connection to his alleged child.

For it is factually impossible for the Petitioner to have fathered a child in 1984 in absence of intimate relationship with the Plaintiff, Merrll Johnson, a/k/a Myrtle Dortch, since 1972, when she fled the state with another man.

Under the circumstances of the instant case, it would be totally inequitable to hold Defendant-Appellant responsible as the father of Plaintiff-appellee's child without hearing on the merits!

REASONS FOR GRANTING THE PETITION

I. Introduction

This Petitioner has been denied a fundamental right to a hearing (in the petitioner's case, a

trial), on the issue of paternity by the state courts of Michigan under the Fourteenth Amendment of the United States Constitution.

In close connection, the lower court of Michigan has foreclosed the Petitioner from challenging the paternity action against him based on a default judgment obtained in absence of notice to him. The appellate courts of Michigan have upheld the lower court's determination, inspite of affidavits attaching to Petitioner's Motion for Relief from Judgment, MCR 2.612, indicating it was not possible for the Petitioner to have been served at the time or place attest to by the process server.

Additionally, the Petitioner was foreclosed from challenging the blood test results based on the default judgment issued prior to taking of the blood test.

In short, the factual context from which the default judgment (Paternity) was derived and the consequential impact to the private and pecuniary interests of the Petitioner (present and future) was violative of both procedural and substantive due process under the United States Constitution.

As a consequence of the above, the Petitioner seeks this Court's grant of Writ in order to rectify the Constitutional infringements imposed upon him.

II. THE RIGHT TO NOTICE AND A HEARING UNDER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION AS ENVISIONED BY THE FIFTH AMENDMENT SUBSUMES THE "EXTRAORDINARY CIRCUMSTANCES" REQUIREMENTS OF MCR 2.612 AND THEREBY DICTATES A TRIAL ON THE PATERNITY ISSUE.

The Michigan Court of Appeals in Petroff v Petroff, 88 Mich App 18; 276, NW2d 503 (1979) is illustrative of the type of case that reflects the constitutional violation predominating over the statutory or court rule requirements. In Petroff v Petroff, supra, the Court of Appeals held that the mandatory notice requirement relative to the judgment of default (then GCR 1963, 520.2(2)) and the attending failure to give the required notice invalidates the judgment and requires it to be vacated.

The Constitutional rationale for the above holding was articulated by the Court in Petroff, supra, as follows:

> [W]e hold that constitutional due process requires notice so that an opportunity is provided to attend and present a Claim of defense; we think that GCR 1963, 520.2(2) is an expression of a fundamental concept of law. It is patently unfair to compel a party to demonstrate a meritorious defense in order to get a default judgment set aside when the manner in which the default judgment was entered constituted a denial of due process.

Accordingly, the United States Supreme Court in Greene v Lindsey, 456 US 444; 102 S Ct 1874; 72 LEd2d 249 (1982), reiterates the above point as authored by Justice Brennan and concurred by the majority, when he wrote:

> "The fundamental requisite of due process of law is the opportunity to be heard." Grannis v Ordean, 234 US 385, 394; 58 LEd 1363 34 S Ct 779 (1914). And the "right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest," Mullane, supra, at 314, 92 LEd 865, 70 S Ct 652. Personal notice guarantees actual notice of the pendency of a legal action; it thus presents the ideal circumstance under which no commence legal proceedings against a person, and has traditionally been deemed necessary in actions styled in personam. McDonald v Mabee, 243 US 9092, 61 LEd 608, 37 S Ct 343 (1917). *** …But we have also clearly recognized that the Due Process Clause does prescribe a constitutional minimum: "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality, is notice reasonably calculated, under all the circumstances, to appraise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane, 339 US; at 314, 94 LEd 865, 70 S Ct 652.

Under the facts in the instant case, the entry of a default judgment based on Plaintiff-Respondent

Merll Johnson, a/k/a Merll Dortch's paternity complaint was obtained without providing proper notice of such pending action. As previously noted in petitioner's "statement of case", the petitioner was unaware of any paternity action being lodged against him (Petitioner had received a payment book in the name of a Matterson Anderson from the Friend of Court, Wayne County, Michigan. The presumption on part of the Petitioner at the time of initial receiving of book from the Friend of Court was that such mail had been delivered to him mistakenly.

It was not until petitioner was in attendance of the show cause hearing on January 10, 1989 before the Honorable Michael J. Connor that Petitioner first became aware that he was the alleged father of a male child, Matthew Johnson, born on July 26, 1984 to the child's mother, Merll Johnson a/k/a Merll Dortch, out of wedlock.

Furthermore, as the record substantiates, the petitioner was represented by Charles Fonville, Esq., on January 10, 1989 and was appearing for the express purpose of challenging the jurisdiction over him or alternatively, a motion to quash order of show cause, having never been apprised by personal service or otherwise that a paternity complaint had been lodged against him.

However, Petitioner's jurisdictional challenge at the show cause proceeding of January 10, 1989

was ignored as the following verbal exchange between the court and attorney fonville shows:

> MR. FONVILLE: Well, I disagree with the Referee because I think if we are going to have a question with regard to jurisdiction, we should file a motion.
>
> THE COURT: At some point maybe you will file a motion in that regard.
>
> MR. FONVILLE: If he doesn't, there was a petition for an order to show cause. There is a show cause. He was directed to pay $350 immediately and execute a $100 wage assignment. If he doesn't do that today, then I hope he has brought his toothbrush.
>
> THE COURT: And if you want to file some motion, I mean, you don't want to be heard on it today.
>
> MR. FONVILLE: No, I am not prepared.
>
> THE COURT: You can have the motion heard anytime you want, I guess, but in the meantime he better comply with that order or we have got a place for him.
>
> (P 20 and 21 of T, LL 19-25 and 1-12 respectively.)

Responding to the threat of incarceration, the petitioner, Mr. Anderson, unwillingly paid $350.00 to the Friend of the court, to be surrendered to Ms. Merll Johnson, a/k/a Ms. Dortch.

Based on the circumstances of the instant case,

it was not only inequitable, but contrary to fundamental due process to compel petitioner to pay to Friend of the Court such funds which is tantamount to an acknowledgement of paternity without benefit of hearing.

The pertinent fact is that the process server in his affidavit stated that service was executed at 8:50 pm on June 23, 1988. Contrarily, the letter from Ford Motor Company indicates that the petitioner was working on June 22 and June 23, 1988 on the afternoon shift from 3:30 pm to 12 midnight. Thus, it was impossible to have served the petitioner at time sworn to by the process server. See Affidavit of Adolphus Thornton, (found in Appendix) resident of 3831 Kendall in the City of Detroit confirming that petitioner was not at home on the June 23, 1988 date.

Petitioner's compelled payment based on order of support and affiliation could not be deemed conclusive of paternity inasmuch as such implicit acknowledgement was achieved under both the threat of a 20 day jailing and in absence of notice. See e.g. Department of Social Services v. Franzel, 204 Mich App 385; 516 NW2d 497 (1994), a paternity case, indicating the non-conclusiveness of paternity when it observed:

"…there is no public policy that imposes on

> promiscuity in general the obligations of parenthood absent the necessity of connection. To hold otherwise would obscure the distinction between marriage and sexual responsibility, and effect a sort of fatherhood obligation by Russian roulette, pick one of a collective, choose one of a group, which we decline to sanction…

The facts in Franzel, supra, bears some inequitable resemblance to each other; however, the major difference is that Franzel executed an acknowledgement of paternity, whereas Petitioner in the instant cause has steadfastly denied being the father of Matthew Johnson. His position has been and remains that at the time of the birth of a child to Merll Johnson, a/k/a merll Dortch, allegedly fathered by him some 12 years subsequent to their having contact with each other, and after she had moved to California to live with another man, while Petitioner remained a resident of the State of Michigan, makes it unfair for him to be deemed responsible for the child and for an Order of Support and Filiation to issue him without benefit of a trial.

A proper reading of Franzel, supra establishes the proposition that the court may grant relief from judgment and/or extraordinary circumstances…" and relief from judgement on grounds any other reason justifying relief from the operation of the judgement is available only when extraordinary cir-

cumstances make relief from judgment necessary to achieve justice". Bonner v Bonner, 45 Mich App 148, 206 NW2d 234 (1973).

Unquestionably, the circumstances involved in the instant cause are not only unique, but are extraordinary as well, especially when the mother and "alleged" father separated about August or September of 1972, and did not see each other again until on or about January 10, 1989 … During the interval, the mother, Merll Johnson a/k/a Myrtle Dortch, became the mother of a son, Matthew Johnson, born on July 26, 1984, some 12 years subsequent to her having left the State of Michigan in the company of another man and taking up residence in the State of California.

Further, in petitioner's motion for relief from judgment based on MCR 2.612, petitioner provide the Court with an affidavit from his employer, the Ford Motor Company, Wixom Plant, substantiating the petitioner's contention that he was not present at the time of process server's alleged visit of his home. Notably, at the initial evidentiary hearing where the petitioner by means of motion, did seek to quash the service of process. The Court there erroneously held that the petitioner was the person that process server observed when he attempted to serve the petitioner. Thus, reasoning from the erroneous fact that he believed the process server

had observed the petitioner on the day of his attempted personal service of the petitioner, the trial court, in the person of Judge Richard Kaufman, determined that the petitioner had failed to meet its burden and thereby such ruling resulted in the sustaining of the default judgment.

Clearly, if the facts upon which the court based its ruling is found to be erroneous, especially as it relates to the petitioner's presence, it would of necessity dictate a finding that the service should have been set aside and the consequential default judgement ensuing thereof should have been deemed improperly granted.

Certainly, the burden of proof to show non-service is upon the party attacking the jurisdiction of the court; mere denial of such service by that party is insufficient. Delph v Smith, 354 Mich 12; 91 NW2d 854 (1958).

In Delph v Smith, supra, the Court cited from several cases that are indeed pertinent when the service of process is subjected to attack:

> "In direct attack upon the judgment, corroboration would have been necessary to impeach the return of service".
>
> ...The security of judicial proceedings demands that the showing to impeach an officer's return of service of process shall be clear and convincing (citation omitted), and with substan-

tial corroboration of a defendant's denial of service (citation omitted."

* * *

"any circumstantial evidence worthy of consideration in support of the denial of service by the interested party, will suffice to make the denial prevail over the return, providing of course that the judge so considers (citation omitted)"

id. pp 17-18

By way of reiteration, the petitioner in his motion for relief from judgment, MCR 2.612, provided the trial court with substantial corroboration - evidence that is clear and convincing.

A retrospective look at the initial record reflects the combination of facts considered by the court in concluding that the service of process was satisfied.

THE COURT: …when a proper service of process on its base is filed and jurisdiction is challenged on the base of improper [service], the law requires that the burden be born by the defendant challenging service to show in a hearing by a preponderance of evidence that proper service was not made.

Michigan Court Rules indicate that an action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action in the time provided in

these rules for service. Looking at the record created at this hearing in favor of the defendant's position that service of process was not made, is the statement and testimony of Mr. Materson Anderson, that, in fact, it was not made.

Against that testimony we have the testimony of the process [server] service who testifies that he arrived at the correct address, admittedly the correct address of Mr. Anderson, that he, through a door talked with a person who made statements that the Court finds significantly imply that it was Materson Anderson, that when he saw the person grab the papers off the door that this person did meet the description that he was given of Materson Anderson, even though two years later or a year and a half later, he can't remember that description which the court finds understandable. And that also he attempted this service at a time when he was told that it would be a good time to make service of Mr. Anderson.

In addition to that, two notices were sent to Mr. Anderson by the Friend of Court pursuant to their policy to his correct address, notwithstanding the fact that the Plaintiff might have given a different address somewhere. In fact, the notices that were sent, had his address, Mr. Anderson claims that he didn't get those, although he did get another communication, a payment booklet. And finally, the court does find relevant, the significant delay between the time that Mr. Anderson admitted that he did get some notice, which was the coupon book and the time that he is moving to challenge jurisdiction.

> Based on all of this, the Court does not find the defendant has met its burden and will deny the motion to quash service (E.H. 1-19-90, pp 49-51).

The Court of Appeals decision of May 16, 1991, [Merll Johnson v Materson Anderson, No. 126720] affirmed the trial court's decision. Subsequently, the Michigan Supreme Court refused to entertain the issues.

Distinguishably, however, petitioner's motion for relief from judgment and attaching corroborative evidence in the form of affidavits [previously mentioned, affidavit of resident of premises, Thornton and the Ford Motor Company, Wixom Plant] reflect that on the dates and time surrounding the attempted service of process as testified to by the process server, Charles Scott Baer could not have been made on the petitioner since he was at work on June 23, 1988 during the date and time in question. See testimonial record of process server, Baer, wherein it is recorded that the service of process was attempted on the June 23, 1988 date. See E. H. 1-19-90 p 11.; also Appendix C.

If the petitioner was at work at the time and on the date of the attempted service of process, it would constitute a clearly erroneous determination to rule that the petitioner was "present" for service purposes. See e.g. James v James, 57 Mich App

452; 225 NW2d 804 (1975).

Although the petitioner by his motion for relief from judgment was pursued under MCR 2.612 based on "extraordinary circumstances" rationale as an exception to the usual time restraints for so bringing such a motion, the more predominant due process violation associated with the default judgment flowing from the faulty service of process subsumes that "extraordinary circumstances rationale of MCR 2.612." Obviously, the logical and legal extension of the aformentioned observation requires the setting aside of the default judgment and providing of the petitioner his constitutional protection of a trial.

Again, this is not to deny the existence of legal authority for granting defendant's motion for relief from judgment after expiration of time generally to entertain such motion. See Franzel, supra, however, it is the petitioner's contention that there exists no greater "extraordinary circumstances" then the circumstances present in the instant case amounting to a most grievous and prejudicial constitutional violation surrounding the notice question."

III. THE PETITIONER SHOULD BE PROVIDED THE OPPORTUNITY FOR TRIAL WHERE PETITIONER HAS BEEN SUBJECTED TO BOTH PROCEDURAL AND SUBSTANTIVE DUE PROCESS VIOLATIONS ON THE

ISSUE OF PATERNITY, THAT IS EVIDENCED BY THE PROSPECT OF A PRESENT AND FUTURE IMPROPER TAKING OF THE PROPERTY OF PETITIONER BASED ON A IMPROPER DEFAULT JUDGMENT AND NON-CONCLUSIVE BLOOD TEST.

The impropriety of the default judgment component appearing under Argument II, has been adequately argued under Argument I, except for a factual matter that was obviously overlooked by Circuit Judge Kaufman in his fact-finding. See EH 1-19-90, p

Assuming the notices had been addressed to the right address, the named "Matterson" Anderson is not the proper surname of the petitioner.

In this regard, the absence of a proper named party in association with a mailing could not presume to have provided notice in fact to a party identified by the name "Matterson" when in fact the name of the party implicated is "Madison." See e.g. Hope v Victor, 12 Mich App 397; 162 NW2d 918 (1968), where, that Court discussed the party-in-fact.

Moving from the default judgment to the non-conclusive blood test that was administered under compelling circumstances to the petitioner, the United States Supreme Court in Little v Streater, 452 US 1; 68 LEd2d, 101 SCt 2202 (1981), a paternity suit, set forth the due process standard and its application as follows:

The Fourteenth Amendment provides in part: "No state shall … deprive any person of life, liberty, or property without due process of law …

* * *

Due process, "unlike some legal rules, is not a technical conception with a fixed place and circumstances." Joint Anti-Facist Refugee Committee v McGrath, 341 US 123, 162, 95 LEd 817, 71 SCt 624 (1951) (concurring opinion). Rather, it is flexible and calls for such procedural protections as the particular situation demands." Morrisey v Brewer, 408 US 471, 481, 33 LEd2d 484, 92 SCt 2593 (1972). In Boddie v Connecticut, 401 US 371, 377, 28 LE2d 113, 91 SCt 780 (1971), the Court held that due process requires, at a minimum, that absent a countervailing stated interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard," accord Armstrong v Manzo, 380 US 545, 552, 14 LEd2d 62, 85 SCt 1187 (1965). Mullane v Central Hanover Bank and Trust Co., 338 US 306, 313, 94 LEd 865, 70 SCt 652 (1950). And in Matthews v Eldridge, 424 US 319, 335, 47 LEd2d 18, 96 SCt 893 (1976), we explained.

"[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors; first, the private interest that will be affected by the official action, second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and

finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substituted procedural requirement would entail."

The identification of the specific dictates of due process in the instant case as applied to the three above factors are as follows:

The Private Interest

Obviously, the petitioner has a pecuniary interest in avoiding a substantial support obligation. Referring to Little v Streater, supra, at 13, the substantial concern at issue "is the creation of a parent-child relationship" and the attending "familiar bonds" with the constitutional protections accorded such relationships whether legitimized by marriage or not. See e.g. Stanley v Illinois, 405 US 645, 651-652; 31 LEd2d 551; 92 SCt 1208 (1972).

More important, "both the child and the petitioner-defendant, in a paternity action has compelling interest in the accuracy of such a determination" id. 13. Although in close connection to the prior statement, the probability of paternity was not determined to be "99% or higher" in the petitioner's case, wherein "paternity shall be presumed" MCLA 722.716(5). The clearly erroneous entry of default judgment prior to the blood test pre-

cluded the defendant from raising any defense to the blood test results at trial. Such blood test results of 98 probability was tantamount to giving conclusiveness to less then required presumption of paternity under the statute. Further, the evident prejudice to the petitioner's denial of defense at trial was buttressed by the Plaintiff's Merll Johnson, a/k/a Merll Dortch's deposition testimony where she acknowledged some affiliation with another person or person(s) at the time of conception.

Risk of Erroneous Deprivation of the Private Interests/Procedural

Under MCLA 722.716(1), the petitioner was ordered to submit to a blood test which he complied with. Procedurally, such ordered blood testing is pursued prior to trial and one of the remedies available to the Court is the entry of a default judgment for non-compliance with ordered blood testing. See MCLA 722.716(1)(a).

Pertinently, in the instant case, the petitioner had been subjected to the remedy of default judgment prior to the ordered blood testing and was consequently precluded from pursuing his paternity challenge at trial.

Such denial of trial was especially prejudicial to the defendant when the results of the blood test

did not exclude with another man other than the petitioner at time of her conception; also, there was material memory lapses (loss) recorded in the deposition of plaintiff Merll Johnson, a/k/a Merll Dortch's testimonial responses to matters germane to petitioner's successful defense, (See Deposition, 1-19-89) denied opportunity for cross examination of Plaintiff's expert witnesses, discovering whereabouts and testing of other party or parties of which the Plaintiff had some affiliation at the time in question.

Unquestionably, the petitioner is not challenging the blood testing statues' constitutionality, MCLA 722.716 on its face, but the petitioner does challenge its application under his particular circumstances when the blood test result has been utilized but without benefit of trial. "[A] statue … may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question" Boddie v Connecticut, 401 US at 379, 28 LEd2d 113, 91 SCt 780 (1971).

Clearly, the risk of an erroneous deprivation of the petitioner's private interest is exacerbated by the absence of trial. For in alluding to the wisdom shared in Little v Streater, supra, once again, Chief Justice Burger in delivering his opin-

ion of the court aptly observed:

> "The value of blood tests as wholesome aid in the quest for truth in the administration of justice in these matters cannot be garnered in this day. Their reliability as an indicator of the truth has been fully established. The substantial weight of medical and legal authority attests their accuracy not to prove paternity, and not always to disprove it, but they can disprove it conclusively in a great many cases provided they are administered by specially qualified experts".

One clear fact emerges from Chief Burger's comment above, the blood test results do not prove paternity. See e.g. Tyler v King, 496 A2d 16 (PA Super 1985), and Strickland v Strickland, 456 SO2d 583 (Aa App. 2 Dist. 1984), paternity cases support in principle the non-conclusiveness of blood tests. Petitioner's private interest under the instant facts previously set forth predominate. The dictates of fundamental fairness inherent under the due process clause require the petitioner to be provided a trial.

The Government Interest

the government became inextricably involved in the instant matter when it chose to utilize its power to effect the petitioner's liberty interest if he failed to make payment of $350.00 to the

court based on its Order of Affiliation resulting from the challenged entry of default. See e.g. MCLA 722.717.

Further, the Friend of the Court employed its own legal counsel at the evidentiary hearing of 1-19-90 to defend the Plaintiff against the Petitioner's challenge of the service of process (Petitioner's argument: lack of notice) from which the entry of default proceeded.

Hence, under Matthews v Eldridge, supra, three factor test, it is quite clear that the private interest of the petitioner predominates, and the attending necessity of compliance consistent to fundamental fairness associated with due process require that petitioner be provided a trial.

Conclusion

For the above reasons stated, the case authority cited in support thereof, this Petition for Certiorari should be granted.

Respectfully submitted:

_____

MADISON ANDERSON, In Pro Per

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

OCTOBER TERM, 1995

MADISON ANDERSON,
Petitioner,

v.

MERLL JOHNSON,
aka Merll Dortch,
Respondent.

CERTIFICATE OF SERVICE

Madison Anderson certifies that on the day of May, 1996 he served copies of Petition for Writ of Certiorari to the Michigan Supreme Court, upon counsel for Respondent: Office of the Friend of the Court, Paternity Prosecution Unit, Suite 619, Penobscot Building 645 Griswold Street, Detroit, Michigan 48226, by placing same in an envelope in a U.S. mail receptacle with first-class postage fully prepaid thereon.

I declare that the above statements are true to the best of my information, knowledge and belief. MCR 2.114 (A)(2)(b).

_____

MADISON ANDERSON

APPENDIX A
(Orders-Judgements)

MICHIGAN SUPREME COURT
ORDER

ENTERED: FEBRUARY 23, 1996
102739(15)

MERLL JOHNSON,
Plaintiff-Appellee,

v

MADISON ANDERSON,
Defendant-Appellant.

SC: 102739
COA: 180724
LC: 88-865543-DP

On order of the Court, the motion for reconsideration of this Court's order of December 27, 1995, is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

February 23, 1996 _/s/_____
Corbin R. Davis
Clerk

APPENDIX A

MICHIGAN SUPREME COURT
ORDER

ENTERED: DECEMBER 27, 1995
102739(15)

MERLL JOHNSON,
Plaintiff-Appellee,

v

MADISON ANDERSON,
Defendant-Appellant.

SC: 102739
COA: 180724
LC: 88-865543-DP

On order of the Court, the delayed application for leave to appeal is considered, and is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court

December 27, 1995 /s/
Corbin R. Davis
Clerk

APPENDIX A

STATE OF MICHIGAN
COURT OF APPEALS

ENTERED: MAY 16, 1991
102739(15)

MERLL JOHNSON,
Plaintiff-Appellee,

v

MADISON ANDERSON,
Defendant-Appellant.

No.: 126720

Before: Murphy, P.J., and Shepherd and T.G. Kavanach,* JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's denial of his motions to set aside a default judgement and order of filiation on support entered September 19, 1988. We affirm.

The trial court properly denied defendant's motion to quash service of process. Defendant failed to produce any evidence beyond his own denial of service, and, thus, failed to meet his burden of proving non-service. Delph v Smith, 354 Mich

12; 91 NW2d 854 (1958); Ins Co of North America v Isset, 84 Mich App 45, 49-50; 269 NW2d 301 (1978); James v James, 57 Mich App 452, 454; 225 NW2d 804 (1975). Even if there had been evidence to corroborate defendant's denial, the trial court's determination is given wide latitude. The trial court's finding that defendant received actual and timely notice was supported by the evidence and was not clearly erroneous. Issett, supra; James, supra. Consequently, defendant's claim that the method of service was improper was an insufficient basis for dismissal of the action. MCR 2.105(J)(3). See also Hill v Frawley, 155 Mich App 611, 613-614; 400 NW2d 328 (1986).

Moveover, because the trial court found that defendant had received actual and timely notice, it could also properly conclude that defendant had failed to show sufficient good cause to warrant setting aside the default judgment. The court did not abuse its discretion by denying defendant's motion. See MCR 2.603(D), 2.612(B), and Marposs corp v Autocam Corp, 183 Mich App 166, 170-171; 454 NW2d 194 (1990).

Affirmed.

/s/ William B. Murphy

/s/ John H. Shepherd

/s/ Thomas G. Kavanagh

APPENDIX A

STATE OF MICHIGAN
COURT OF APPEALS

MERLL JOHNSON,
Plaintiff-Appellee,

v

MADISON ANDERSON,
Defendant-Appellant.

No.: 88 865543 DP
Hon. Richard Kaufman

CLIFFORD A. LEVIN (P16601)
Attorney for Plaintiff
544 Cadillac Tower
Wayne County Friend of the Court
(313) 224-2990

O'NEAL O. WRIGHT (P29816)
Attorney for Defendant
561 East Jefferson
Detroit, Michigan 48226
(313) 961-6643

ORDER DENYING DEFENDANT'S MOTION TO QUASH SERVICE OF PROCESS AND TO SET ASIDE DEFAULT, DEFAULT JUDGMENT AND ORDER OF FILIATION

At a session of said court held in the City of Detroit, County of Wayne and State of Michigan on February 16, 1990.

PRESENT: HONORABLE RICHARD C. KAUFMAN,
CIRCUIT COURT JUDGE

This cause having come to be heard before Chief Judge Richard Kaufman, following an appeal of the decision of the Referee, an evidentiary hearing having been heard, all of the parties represented by their respective counsel, and the court being fully advised in the premises;

NOW, THEREFORE, IT IS ORDERED that the Defendant's Motion be denied.

Richard C. Kaufman
CIRCUIT COURT JUDGE

Approved as to form and substance

CLIFFORD A. LEVIN
Attorney for Plaintiff

O'NEAL O. WRIGHT
Attorney for Defendant

APPENDIX A

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT COURT
DEFAULT ORDER OF FILIATION AND
ORDER FOR SUPPORT

MERLL JOHNSON,
Plaintiff-Appellee,

v

MADISON ANDERSON,
Defendant-Appellant.

CONFINEMENT EXPENSES - NOT AVAILABLE AS OF 9/6/88

AT A SESSION OF SAID COURT HELD IN THE CITY OF DETROIT, COUNTY OF WAYNE, STATE OF MICHIGAN ON 9/19/88

PRESENT: HONORABLE RICHARD C. KAUFMAN,
CIRCUIT JUDGE

This cause comes before the court for the entry of an order of filiation, a complaint having been duly filed, and the office of the Friend of the Court having submitted a report and recommendation thereon and both parties having been advised thereof; and the defendant having found to be the father by default, as appears by the record thereof,

Now Therefore:

PATERNITY

It is adjudged, that the defendant, Materson Anderson is the father of the child, named Matthew Johnson, born out of wedlock to the complainant, Merll Johnson on 7/26/84

CHILD SUPPORT

It is ordered that the defendant pay to the office of The Friend of the Court , 11th floor, Cadillac Tower Bldg., 65 Cadillac Square, Detroit, MI 48226. $_____ per _____ then $_____ per week, continuing until the child reaches the age of eighteen (18) years or until further order of the court.

Except as otherwise provided in section 3 of the Support and Visitation Enforcement Act, Act No. 295 of the Public Acts of 1982, being section 552.603 of the Michigan Compiled Laws, a support order that is part of a judgment or is an order in a domestic relations matter as that term is defined in section 31 of the Friend of the Court Act, Act No. 294 of the Public Acts of 1982, being section 552.531 of the Michigan Compiled Laws, is a judgment on and after the date each support payment is due, with full force, effect, and attributes of a

judgement of this state, and is not, on and after the date it is due, subject to retroactive modification.

CONFINEMENT EXPENSES

It is further ordered that the defendant pay to the office of the Friend of the court the confinement expenses incurred in the birth of the child, in the total amount specified under the caption of the order, at the rate of $5.00 per week, commencing the date of this order or as soon as the Friend of the Court has determined the amount due and has notified the defendant.

BLOOD TEST FEE

It is further ordered that the defendant pay to the office of the Friend of the Court, the some of ten ($10.00) dollars per week until the total amounts for blood draw and blood tests, if previously ordered, are paid in full.

ARREARAGE

It is further ordered that the defendant pay forthwith any arrearage owing under any order previously entered into this action.

MEDICAL, DENTAL AND HOSPITAL EXPENSES

It is further ordered that the defendant shall

provide the necessary medical, dental and hospital expenses, and maintain hospitalization insurance for the minor child until the child reaches the age of eighteen (18) years or until further order of the court.

INCOME WITHHOLDING

It is further ordered that, pursuant to MSA 25.176(11)(1) and MSA 25.164(4), in the event a delinquency in the support account exists, upon proper notice an assignment of income shall issue.

CUSTODY

It is further ordered that the plaintiff shall retain custody of the minor child until further order of the court.

DOMICILE

It is further ordered that the domicile or residence of the child shall not be removed from the State of Michigan without prior approval of the court.

CHANGE OF ADDRESS

It is further ordered that the plaintiff and the Defendant shall promptly notify the Friend of the court of any change of his/her address while the order of support is operative.

CHANGE OF EMPLOYER

It is further ordered that, pursuant to MSA 25.164(10), the payer shall give the office of the friend of the court, the name and address of his employer. The payer shall immediately give to the office of the Friend of the Court notice of the name and address of any subsequent employer.

STATUTORY SERVICE FEES

It is further ordered that the defendant shall pay to the Friend of the Court, the sum of two ($2.00) dollars per month, payable semi-Annually in advance on January 2nd and July 2nd hereafter, while the order for support is operative initial payment for months preceding next regular due date shall be made forthwith.

CERTIFIED BY NANCY ARENOHUE

FRIEND OF THE COURT
65 Cadillac Square
Detroit, MI 48226
Mich Bar No P 31004

RICHARD C. KAUFIN
CIRCUIT COURT JUDGE

I hereby acknowledge receipt of a certified copy of the order of filiation and support

_____

Plaintiff / Defendant

APPENDIX B

CONSTITUTIONAL PROVISIONS, STATUTES AND COURT RULES

Amendment XIV

1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction to the equal protection of the laws.

Rule 2.105 Process; Manner of Service

(A) Individuals. Process may be served on a resident or nonresident individual by,

(1) delivering a summons and a copy of the complaint to the defendant personally; or

(2) sending a summons and a copy of the complaint by registered or certified mail,

return receipt requested, and delivery restricted to the addressee. Service is made when the defendant acknowledges receipt of the mail. A copy of the return receipt signed by the defendant must be attached to proof showing service under subrule (A)(2).

(I) Discretion of the Court.

(1) On a showing that service of process cannot reasonably be made as provided by this rule, the court may by order permit service of process to be made in any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

(2) A request for an order under the rule must be made in a verified motion dated not more than 14 days before it is filed. The motion must set forth sufficient facts to show that process cannot be served under this rule and must state the defendant's address or last known address, or that no address of the defendant is known. If the name or present address of the defendant is unknown, the moving party must set forth facts showing diligent inquiry to ascertain

it. A hearing on the motion is not required unless the court so directs.

(3) Service of process may not be made under this subrule before entry of the court's order permitting it.

(J) Jurisdiction; Range of Service; Effect of Improper Service

(1) Provisions for service of process contained in these rules are intended to satisfy the due process requirement that a defendant be informed of an action by the best means available under the circumstances. These rules are not intended to limit or expand the jurisdiction given the Michigan courts over a defendant. The jurisdiction of a court over a defendant is governed by the United States Constitution and the constitution and laws of the State of Michigan. See MCL 600.701 et seq.; MSA 27A.701 et seq.

Rule 2.603 Default and Default Judgment.

(A) Entry; Notice; Effect.

(2) Notice of the entry must be sent to all parties who have appeared and to the defaulted party. If the defaulted party has not appeared, the notice to the defaulted party may be served by personal service, by ordinary first-class mail at his or her last known address or the place of service, or as otherwise directed by the Court.

(b) In all other courts, the notice must be sent by the party who sought entry of the default. Proof of service and a copy of the notice must be filed with the court.

(3) Once the default of a party has been entered, that party may not proceed with the action until the default has been set aside by the court in accordance with subrule (D) or MCR 2.612.

(4) Notice of Entry of Judgment. The court clerk must promptly mail notice of entry of a default judgment to all parties. The notice to the defendant shall be mailed to the defendant's last known address or the address of the place of service. The clerk must keep a record that notice was given.

(D) Setting Aside Default.

(1) A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.

(2) Except as provided in MCR 2.612, if personal service was made on the party against whom the default was taken, the default, and the default judgment if one has been entered, may only be set aside if the motion is filed.

(a) before entry of judgment, or
(b) if judgment has been entered, within 21 days after the default was entered.

(3) In addition, the court may set aside an entry of default and a judgment by default in accordance with MCR 2.612.

(4) An order setting aside the default must be conditioned on the party against whom the default was taken paying taxable

costs incurred by the other party in reliance on the default, except as prescribed in MCR 2.625(D). The order may also impose other conditions the court deems proper.

Rule 2.612 Relief from Judgment or Order

(B) Defendant not Personally Notified. A defendant over whom personal jurisdiction was necessary and acquired, but who did not in fact have knowledge of the pendency of the action, may enter an appearance within 1 year after final judgment, and if the defendant shows reason justifying relief from the judgment and innocent third persons will not be prejudiced, the court may relieve the defendant from the judgment, order, or proceedings for which personal jurisdiction was necessary, on payment of costs or on conditions the court deems just.

722.716 Blood or tissue typing; DNA profile determinations; refusal to submit; experts conducting typing or determinations; probability calculations, presumptions.

Sec. 6 (1) In a proceeding under this act before trial, the court, upon application made by

or on behalf of either party, or on its own motion, shall order that the mother, child, and alleged father submit to blood or tissue typing determinations, which may include, but are not limited to, determinations or red cell antigens, red cell isoenzymes, human leukocyte antigens, serum proteins, or DNA profiles, to determine whether the alleged father is likely to be, or is not, the father of the child. If the court orders a blood or tissue typing or DNA profile determination to be conducted and a party refuses to submit to the typing or DNA profile determination, in addition to any other remedies available, the court may do either of the following.

(a) Enter a default judgment at the request of the appropriate party.

(5) If the probability of paternity determined by the qualified person described in subsection (2) is 99% or higher, paternity shall be presumed. The burden of proof is upon the alleged father to rebut the presumption by clear and convincing evidence. If 2 or more persons are determined to have a probability of paternity of 99% or higher, paternity shall be presumed for the person with the highest probability.

APPENDIX C

AFFIDAVIT OF ADOLPHUS THORNTON

STATE OF MICHIGAN)
)ss
COUNTY OF WAYNE)

I, Adolphus Thornton, being first duly sworn, depose and state the following:

1. That I am a resident of 3831 Kendall, in the City of Detroit, County of Wayne, State of Michigan.

2. That I currently reside, and did reside during the calendar years of 1988, 1989, 1990, and 1991, at the above address.

3. That the location of 3831 Kendall is a four unit building, which houses three separate units for the front door entrance, and one unit at the rear entrance.

4. That I am one of the three residents who utilize the front door entrance of 3831 Kendall.

5. That all three units have the same entrance of the front door.

6. That on the date of June, 1988 and July, 1988 a man appeared at the address and asked for Madison Anderson.

7. That I responded that Mr. Anderson was not in.

8. That I did not open the front door for the man, later discovered to be a process server.

9. That I was never given any papers by the later discovered process server in this matter, nor did I respond that I was Madison Anderson.

BEST AVAILA

APPENDIX C
(AFFIDAVITS & LETTER(S))

10. That I did not open the front door and remove any papers addressed to Madison Anderson.

Further affiant saith not.

Adolphus Thornton
ADOLPHUS THORNTON

Subscribed and sworn to before
me this 4th day of June, 1991.

Pamela R. Henry
NOTARY PUBLIC, WAYNE COUNTY, MI
MY COMMISSION EXPIRES: 04-23-93

PAMELA R. HENRY
NOTARY PUBLIC - WAYNE COUNTY, MICH.
MY COMMISSION EXPIRES 4-23-93

BLE COPY

BEST AVAILAB

APPENDIX C

Body and Assembly
Ford Motor Company

Wixom Assembly Plant
50000 Grand River Expressway
P.O. Box 1
Wixom, Michigan 48096

5-1893

To: Madison Anderson
(Employee Name)

S.S.# 432-58-2217

This letter will confirm your employment at Ford Motor Company Wixom Assembly Plant. Worked afternoon shift (#3) from 3:30 P.M. to 12:5 midnight on June 22 & 23, 1988 June of 1988

Hire Date: _____

Classification: _____

Rate of Pay: _____

Cost of Living: _____

Shift Premium: _____

Continued Employment: (Good)

Termination Date: _____
(If Applicable)

Hourly Personnel
WIXOM ASSEMBLY PLANT
PERSONNEL BENEFIT

LE COPY

APPENDIX C

STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE

MERLL JOHNSON
Plaintiff,

vs. Civil Action No. 88-865543-DP

MATERSON ANDERSON
Defendant,

PROOF OF SERVICE

STATE OF MICHIGAN)
COUNTY OF WAYNE)

NOW COMES CHARLES S. BAER, and after being duly sworn, deposes and says that he is a person of suitable age and discretion to serve process and that on the 23rd. day of June 1988, at 3831 Kendall, Detroit, Michigan in the County of Wayne, He served a Summons and a copy of the Complaimt with instructions upon MATERSON ANDERSON, known to be the defendant named therein, by then and there delivering to the defendant said Summons and a copy of the Complaint. FURTHER, 1) while attempting service, man would not open door, 2) man acknowledged being MATERSON ANDERSON, known to be the defendant named therein, 3) Defendant acknowledged my intent to serve him, therefore, service was made by firmly attaching said documents to the front door of said address, 4) upon exiting to my vehichle, defendant opened front door, removed and read said documents.

This service was executed at 8:50 P.M. this date.

FURTHER AFFIANT SAYETH NOT

CHARLES S. BAER
DAILY PROCESS SERVICE
2510 Cadillac Tower
Detroit, Michigan 48226
(313) 962-3372

Subscribed and sworn to before me this 24th day of June, 1988, a Notary Public in and for Wayne County, Michigan.

June A. Halapir
My Commission expires March 13, 1989.

(2)

Case No. 95-1891

Supreme Court, U.S.
FILED
SEP 9 1996
CLERK

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

MADISON ANDERSON,
Petitioner,

vs

MERLL JOHNSON
a/k/a Merle Dortch,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

SUPPLEMENTAL BRIEF

MADISON ANDERSON
In Pro Per
3831 Kendall
Detroit, MI

12 pp

SUPPLEMENTAL QUESTION PRESENTED FOR REVIEW

Was the Due Process Rights of the Petitioner Violated Irrevocably Resulting in Deprivation of Petitioner's Property Rights Where Personal Service Nor Substituted Service Was Ever Invoked According to the Court Rule(s).

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IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

October Term, 1995

MADISON ANDERSON,
Petitioner,

vs

MERLL JOHNSON
a/k/a Merle Dortch,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

The Petitioner, Madison Anderson, respectfully submits his Supplemental Brief to his original Petition For Writ of Certiorari, wherein is contained one additional argument as follows:

ARGUMENT

The Due Process of the Petitioner Was Violated Irrevocably Resulting in Deprivation of Petitioner's Property Rights Where Personal Service Nor Substitute Service Was Ever Invoked According to the Court Rule, MCR 2.105 (A), (1), (2).

Under Court Rule MCR 2.105 (a) (1) (2), the rule governing service of process states:

"(A) Individuals. Process may be served on a resident or non-resident individual by,

(1) Delivering a summons and a copy of the complaint to the defendant personally; or

(2) Sending a summons and copy of the complaint by registered or certified mail..."

The process server in the person of Charles Baer affirms the above argument by his personal testimony that reflects his conscious decision to exercise a method of serving the Summons and Complaint contrary to MCR 2.105 (A). That avenue of thought may be further explored by giving Mr. Baer the benefit of the doubt

and assuming the person on Kendall, who steadfastly refused to open the door or accept the Summons and Complaint, miraculously changed his mind and decided to remove the documents from the door in full view of Mr. Baer. Point of fact is, when Mr. Baer left the documents taped to the common door of a multi-family building, he had no way of knowing who would remove them, or if he would see the person he was speaking with. He still concedes the person is unknown to him and can only be described as a black man, who removed the documents and took them inside. Mr. Baer obviously had every intent of leaving those papers taped to the door and informing Plaintiff/Appellee that they had been properly served.

Mr. Baer didn't need the courts to let him know this was improper service. He acknowledges his own apprehension regarding the propriety of this method of service when he testified that "I do recall the service, Sir, because it's the one and only service I made in this type of instance where somebody refused to open the door and I did leave the documents taped to the door." (Trans. P. 12, lines 4-7). He never did it before because, as a professional process server, he knew he could only tape documents to the door at the

discretion of the court as described in MCR 2.105 (I).

> (1) On a showing that service of process cannot be made as provided by this rule, the court may by order permit service of process to be made in any other manner reasonably calculated to give the Defendant actual notice of the proceedings and an opportunity to be heard. (Emphasis added).
>
> (2) A request for an order under the rule must be made in a verified motion dated not more than 14 days before it is filed. The motion must set forth sufficient facts to how the process cannot be served under this rule and must state the Defendant's address or last known address, or that no address of the Defendant is known. If the name or present address of the Defendant is unknown, the moving party must set forth facts showing diligent inquiry to ascertain it. A hearing on the motion is not required unless the court so directs.
>
> (3) Service of process may not be made under this subrule before entry of the court's order permitting it.

In this case, the Plaintiff/Appellee's attorney never petitioned the Court for an order for substituted service. It is apparent that the trial court erred and should have seriously questioned the act of taping a Summons and Complaint to the common door of a

multi-family dwelling and found it to be improper and not in accordance with the Court Rules.

Assuming a court could find that taping the documents to the door would be sufficient to give actual notice, Plaintiff/Appellee still failed to obtain a court order prior to using the method of service as required by MCR 1.205 (I) (3). To allow Plaintiff/ Appellee to use the method of service of process described supra, prior to obtaining a valid court order, as required, would only serve to encourage unscrupulous process servers to disregard MCR 2.105 (I), and particularly MCR 2.105 (I) (3).

Michigan case law is also not in accord with the events which relate to the way Defendant/Appellant was allegedly served. In Sechler vs. HanHoey, 83 Mich App 252; 255, 268 NW 2d 364 (1978), the Court discussed the purpose and guideline for GCR 1963, 105.8 which is most closely restated by MCR 2.105 (I). In this case the Court stated:

> "The purpose behind GCR 1963, 105.8 is the allow the judge, in the exercise of his discretion, to order service by substitute means if those means are reasonably calculated to provide actual

> notice to the defendant. The text of the rule establishes as a threshold requirement that service cannot be reasonably made in a manner provided for under the other rules. In State Board of Education vs. VanZellen, 1 Mich App 147,156'134 NW 2d 838 (1965), the court stated that, "It appears from the language of the court rule, that the discretion of the court is activated by a showing to the court that service of process cannot reasonably be made in the manner provided for under the rules."

Mr. Baer's testimony clearly establishes he did not seek an order from the Court and he made no attempt at meeting the threshold requirement. The Court is asked to note that Mr. Baer states he only made one attempt to serve the Summons and Complaint and that was at the Kendall location. (Trans. p. 11, lines 8-11). There was no indication that service of process could not reasonably be made in the manner provided under other rules.

Defendant/Appellant offers a possible explanation for Mr. Baer's haste to circumvent the court rules and prepare to designate his actions as personal service. On page 7, lines 9-20 of the transcript, he states that he received Twenty-Five Dollars ($25.00) for each summons and complaint served, whether he does it on

the first attempt or several attempts later. Obviously, to make the fewer number of attempts is more advantageous for Mr. Baer.

Pointedly, the Petitioner is possessed of the knowledge that MCR 2.105 (J) provides a remedy to the question of improper service when the party is noticed or informed of the actions timely.

In this connection, a default judgment had been entered against the Petitioner and as earlier noted in previous argument(s) that monies were extracted from the Petitioner response to a subsequent scheduled hearing in this matter.

Here the fundamental point that needs stressing is that the Petitioner had not been placed on notice of the pending paternity action.

Thus, the devastating consequence is that the Petitioner has been subjected to property deprivation arising from the default judgment of paternity all such property deprivation has taken place and continues until this day without the Petitioner having ever had an opportunity to challenge or defend himself.

In short, the Petitioner's due process rights have been violated irrevocably.

Respectfully submitted,

MADISON ANDERSON, In Pro Per

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

October Term, 1995

MADISON ANDERSON,
Petitioner,

Case No. **95-1891**

vs

MERLL JOHNSON
a/k/a Merle Dortch,
Respondent.

CERTIFICATE OF SERVICE

Madison Anderson certifies that on the _____ day of September, 1996, he served copies of Supplemental Brief of Petition for Writ of Certiorari to the Michigan Supreme Court, upon Counsel for the Respondent: Office of the Friend of the Court, Paternity Prosecution Unit, Suite 619 Penobscot Building, 645 Griswold Street, Detroit, Michigan 48226, by placing same in an envelope in a U.S. mail receptacle with first-class postage fully prepaid thereon.

I declare that the above statements are true to the best of my information, knowledge, and belief; MCR 2.114 (A) (2) (b).

MADISON ANDERSON